

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Customs and
Patent Appeals and the United States
Customs Court

Vol. 14

MAY 28, 1980

No. 22

This issue contains

T.D. 80-123 through 80-125

T.D. 80-127 through 80-132

C.D. 4854

Protest abstracts P80/63 through P80/66

Reap. abstracts R80/127 through R80/143

International Trade Commission Notice

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 80-123)

Cotton and Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of cotton and manmade fiber textile products manufactured or produced in the Dominican Republic

There is published below a directive of April 9, 1980, received by the Commissioner of Customs from the chairman, Committee for the Implementation of Textile Agreements, concerning restriction of entry of cotton and manmade fiber textile products in certain categories manufactured or produced in the Dominican Republic. This directive amends, but does not cancel, that committee's directive of November 28, 1979 (T.D. 80-32).

This directive was published in the Federal Register on April 14, 1980 (45 F.R. 25208), by the committee.

(QUO-2-1)

Dated: May 8, 1980.

WILLIAM D. SLYNE
(For Chester R. Krayton,
Director, Duty Assessment Division).

(T.D. 80-124)

Manmade Fiber Textiles—Restriction on Entry

Restriction on entry of manmade fiber textiles manufactured or produced in Malaysia

There is published below a directive of April 18, 1980, received by the Commissioner of Customs from the chairman, Committee for the Implementation of Textile Agreements, concerning restriction of entry of manmade fiber textiles in category 604 manufactured or produced in Malaysia. This directive amends, but does not cancel, that committee's directive of December 11, 1979 (T.D. 80-52).

This directive was published in the Federal Register on April 23, 1980 (45 F.R. 27463), by the committee.

(QUO-2-1)

Dated: May 8, 1980.

WILLIAM D. SLYNE
(For Chester R. Krayton,
Director, Duty Assessment Division).

(T.D. 80-125)

Cotton Textile Products—Restriction on Entry

Restriction on entry of cotton textile products manufactured or produced in Brazil

There is published below a directive of March 26, 1980, received by the Commissioner of Customs from the chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton textile products in categories 337, 339, and 369 (part) manufactured or produced in Brazil.

This directive was published in the Federal Register on March 31, 1980 (45 F.R. 20990), by the committee. A correction to the directive was published in the Federal Register on April 14, 1980 (45 F.R. 25209), showing pounds as the unit of quantity for category 369 (part).

(QUO-2-1)

Dated: May 8, 1980.

WILLIAM D. SLYNE
(For Chester R. Krayton,
Director, Duty Assessment Division).

(T.D. 80-127)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Brazil cruzeiro, People's Republic of China yuan, Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical) and Venezuela bolivar

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the informa-

tion and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

Brazil cruzeiro:

March 31–April 4, 1980..... \$0. 0214

People's Republic of China yuan:

March 31, 1980..... \$0. 631074

April 1–4, 1980..... . 628575

Hong Kong dollar:

March 31, 1980..... \$0. 196754

April 1, 1980..... . 196078

April 2, 1980..... . 196812

April 3–4, 1980..... . 196464

Iran rial:

Not

March 31–April 4, 1980..... available

Philippines peso:

March 31–April 4, 1980..... \$0. 1345

Singapore dollar:

March 31, 1980..... \$0. 437733

April 1, 1980..... . 432900

April 2, 1980..... . 434405

April 3–4, 1980..... . 434783

Thailand baht (tical):

March 31–April 2, 1980..... \$0. 0489

April 3–4, 1980..... . 0490

Venezuela bolivar:

March 31–April 4, 1980..... \$0. 2329

(LIQ-3-TRODE)

Dated: May 7, 1980.

HARRISON C. FEESE

(For Chester R. Krayton,

Director, Duty Assessment Division).

(T.D. 80-128)

Foreign Currencies—Daily Rates for Countries not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Brazil cruzeiro, People's Republic of China yuan, Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical) and Venezuela bolivar

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying

rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

Brazil cruzeiro:

April 7, 1980.....	\$0. 0214
April 8-11, 1980.....	. 0207

People's Republic of China yuan:

April 7-8, 1980.....	\$0. 628575
April 9-10, 1980.....	. 631752
April 11, 1980.....	. 644621

Hong Kong dollar:

April 7, 1980.....	\$0. 196464
April 8, 1980.....	. 196348
April 9, 1980.....	. 198491
April 10, 1980.....	. 199302
April 11, 1980.....	. 199641

Iran rial:

	Not
April 7-11, 1980.....	available

Philippines peso:

April 7-11, 1980.....	\$0. 1345
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Singapore dollar:

April 7, 1980.....	\$0. 431686
April 8, 1980.....	. 434405
April 9, 1980.....	. 442087
April 10, 1980.....	. 444444
April 11, 1980.....	. 445038

Thailand baht (tical):

April 14-18, 1980.....	\$0. 0490
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Venezuela bolivar:

April 14-18, 1980.....	\$0. 2329
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(LIQ-3-TRODE)

Dated: May 13, 1980.

HARRISON C. FEESE

(For Chester R. Krayton,

Director, Duty Assessment Division).

(T.D. 80-129)

Foreign Currencies—Daily Rates for Countries not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Brazil cruzeiro, People's Republic

of China yuan, Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical) and Venezuela bolivar

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

Brazil cruzeiro:

April 14-18, 1980..... \$0. 0207

People's Republic of China yuan:

April 14-16, 1980..... \$0. 644621

April 17-18, 1980..... . 649857

Hong Kong dollar:

April 14, 1980..... \$0. 200321

April 15, 1980..... . 199203

April 16, 1980..... . 199521

April 17, 1980..... . 200321

April 18, 1980..... . 200803

Iran rial

April 14-18, 1980..... Not available

Philippines peso:

April 14-18, 1980..... \$0. 1345

Singapore dollar:

April 14, 1980..... \$0. 447027

April 15, 1980..... . 444444

April 16, 1980..... . 446130

April 17, 1980..... . 448833

April 18, 1980..... . 451467

Thailand baht (tical):

April 7-11, 1980..... \$0. 0490

Venezuela bolivar:

April 7-11, 1980..... \$0. 2329

(LIQ-3-TRODE)

Dated: May 13, 1980.

HARRISON C. FEESE
(For Chester R. Krayton,
Director, Duty Assessment Division).

(T.D. 80-130)

Foreign Currencies—Variances From Quarterly Rate

Rates of exchange based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in T.D. 80-103 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Austria schilling:

April 14, 1980	.....	\$0. 074738
April 15, 1980	.....	(¹)
April 16, 1980	.....	. 074377
April 17, 1980	.....	. 075572
April 18, 1980	.....	. 075643

Belgium franc:

April 17, 1980	.....	\$0. 033411
April 18, 1980	.....	. 033501

Denmark krone:

April 16, 1980	.....	\$0. 172712
April 17, 1980	.....	. 173010
April 18, 1980	.....	. 173235

Germany deutsche mark:

April 16, 1980	.....	\$0. 537634
April 17, 1980	.....	. 538503
April 18, 1980	.....	. 539374

Ireland pound:

April 14, 1980	.....	\$2. 0010
April 15, 1980	.....	(¹)
April 16, 1980	.....	2. 0070
April 17, 1980	2. 0230
April 18, 1980	2. 0210

Netherlands guilder:

April 16-17, 1980	\$0. 490196
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¹ Rate did not vary this date. Use quarterly rate.

Switzerland franc:

April 14, 1980	-----	\$0. 573723
April 15, 1980	-----	. 565131
April 16, 1980	-----	. 577701
April 17, 1980	-----	. 575705
April 18, 1990	-----	. 574713

(LIQ-3-TRODE)

Dated: April 13, 1980.

HARRISON C. FEESE
(For Chester R. Krayton,
Director, Deputy Assessment Division).

(T.D. 80-131)

Foreign Currencies—Variances From Quarterly Rate

Rates of exchange based upon rates certified to the Secretary of the Treasury by
the Federal Reserve Bank of New York

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in T.D. 80-103 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Austria schilling:

April 11, 1980	-----	\$0. 074627
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Switzerland franc:

April 10, 1980	-----	\$0. 569801
April 11, 1980	-----	. 572082

(LIQ-3-TRODE)

Dated: April 13, 1980.

HARRISON C. FEESE
(For Chester R. Krayton,
Director, Duty Assessment Division).

(T.D. 80-132)

Tariff Classification—Machine-Processed Cigarette Leaf Tobacco

Notice that certain machine-processed cigarette leaf tobacco is reclassified as a
partially manufactured tobacco product

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Decision concerning an American manufacturer's petition.

SUMMARY: The Customs Service has reviewed a petition filed by an American producer of flue-cured tobacco requesting that certain machine-threshed cigarette leaf tobacco, currently classified by Customs as scrap tobacco under item 170.60, Tariff Schedules of the United States (TSUS), be reclassified as stemmed cigarette leaf filler tobacco under item 170.35, TSUS. The Customs Service has reviewed the voluminous record and concludes that the subject merchandise is neither scrap tobacco nor is it in leaf form, but has been processed to the extent that it may be considered a partially manufactured product classifiable under the provision for tobacco, manufactured or not manufactured, not specially provided for, in item 170.80, TSUS.

DATES: This decision will be effective with respect to merchandise entered or withdrawn from warehouse for consumption on or after 30 days from the date of publication of this notice in the CUSTOMS BULLETIN.

FOR FURTHER INFORMATION CONTACT: John G. Hurley, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202-566-5786.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On September 28, 1979, a notice was published in the Federal Register (44 F.R. 56089) indicating that the Customs Service had received a petition from an American producer of flue-cured tobacco, filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), requesting that certain imported machine-threshed cigarette leaf tobacco, currently classified by Customs under the provision for scrap tobacco in item 170.60, Tariff Schedules of the United States (TSUS), be reclassified under the provision for stemmed cigarette leaf filler tobacco in item 170.35, TSUS. Comments concerning the petition were to have been received no later than November 27, 1979.

The merchandise in question is produced in the manner set forth below. Tobacco leaves, approximately 10 to 20 inches in length, are received at the warehouse, graded and sorted, and then placed on a blending line where the undesirable leaves are removed. On a blending conveyor, tips of the leaves and a portion of the stems are removed, leaving the butts.

The moisture content of the butts is increased to make them more pliable, and the moisturized butts are then threshed and separated in

four or five stages. In the separating process, the butts are torn into various sizes. As a result, the desirable lighter fragments are blown into a collecting belt and the heavier elements fall through screens of decreasing size. Those which are heavier, containing stem fragments, pass through a screen having grid wires spaced one-eighth inch apart and are not blended in with the desired product. The combined tip and butt fragments are processed further by partial drying, cooling and remoisturizing to achieve a uniform moisture content. The product will then be compacted by hydraulic ram into cartons, cases, or hogsheads under pressure. This operation will cause additional fragmentation. The stem content of machine-threshed tobacco is said to be about 3 percent. Approximately 60 percent of this threshed product is described as being 1 to 2 inches in length; 25 percent, one-half to 1 inch in length; about 14 percent, one-fourth to one-half inch in length; and 1 percent, one-eighth inch or less in length. This latter size is not in issue. Before being manufactured into cigarettes, the threshed tobacco is mixed with other types of tobacco, further shredded, humidified, and treated with additives.

The petitioner claims that the early administrative decisions reflect the legislative and judicial decisions in defining scrap tobacco as cut pieces of tobacco leaf, and cut slices of tobacco stems resulting from manufacturing of leaf tobacco. Scrap tobacco, the petitioner asserts, is the unintended byproduct of handling, curing, or manufacturing of tobacco, including floor sweepings. In contrast, the subject merchandise is a desired product.

The petitioner alleges that, with respect to the prevailing commercial meaning of stemmed leaf, the trade considers any stemmed leaf product acceptable as stemmed leaf tobacco if the size of the tobacco lamina constituting the product is 81 to 85 percent one-half inch or more in size. It is the petitioner's view that the subject merchandise meets this criterion.

The petitioner asserts that the increase in the importation of tobacco classified as scrap from 1976 through 1978 results in a loss of revenue as the result of lower duty assessed. It is further asserted that importations of this tobacco have had an adverse economic impact on the domestic growers.

DISCUSSION OF COMMENTS

Several hundred comments were received by the Customs Service in response to the instant American manufacturer's petition. The majority of comments from associations of tobacco farmers and individual tobacco farmers in the United States supported the petition. These farmers support the petitioner's claim that importations of the subject merchandise have had an adverse impact on domestic growers.

Several briefs and comments, however, filed on behalf of tobacco processors, oppose the petition and support the current classification as scrap tobacco under item 170.60, TSUS, or, in the alternative, as tobacco, manufactured or not manufactured, not specially provided for, under item 170.80, TSUS. These briefs contend that the term "scrap" includes not only the unintended byproducts resulting from processing of various tobacco products, but also small pieces which are intentionally produced; this, they maintain, is manufactured scrap. The briefs emphasize that the term "leaf" in the tariff schedules has always referred to the whole tobacco leaf or half-leaf. The machine-threshed product cannot be considered a leaf in view of the legislative and judicial history of the subject. The briefs note that the tariff schedules still define tobacco in leaf form, and that these legal definitions have no meaning if not referring to the actual leaf.

A report dated November 6, 1979, was also prepared by the Comptroller General of the United States, in which it was concluded that the subject tobacco was not scrap for tariff purposes, but should be classified as stemmed leaf filler tobacco in item 170.35, TSUS. The report concluded that, because this tobacco was not classified at the higher rate, as much as \$188 million may have been lost over the past 10 years.

DETERMINATION

For tariff purposes, waste has traditionally included not only manufactured articles which have become useless for the original purpose for which they were made and fit only for remanufacture, but also includes refuse, surplus, and useless stuff resulting from manufacture or manufacturing processes. *Harley Co. v. United States*, T.D. 41644 (1926).

With respect to tobacco, the term "scrap tobacco" includes tobacco in the form of fragments and broken pieces resulting from the handling of leaf cigarette tobacco, as well as small pieces one-fourth inch in diameter and shredded pieces up to one-half inch, resulting from the manufacture of tobacco products. The Summary of Tariff Information (1929) stated that the term "scrap tobacco" included three distinct kinds:

- (1) Leaf tobacco scrap, the fragments of leaves broken in sorting, handling, and stemming;
- (2) Factory scrap, the cuttings and clippings which accumulate in the manufacture of cigars;
- (3) Manufactured scrap, generally the cheapest form of smoking tobacco consisting of leaves broken or cut into coarse pieces heavily sweetened for smoking or chewing.

In contrast, in *Latimer v. United States*, 223 U.S. 501 (1912), the Supreme Court considered a product consisting of small pieces of

tobacco broken in the manufacture and handling of tobacco which were used in the manufacture of a cheap grade of cigarettes and stogies not to be scrap, but tobacco manufactured or not manufactured.

Customs has ruled that flue-cured tobacco, of a cigarette type, which consisted of pieces of lamina measuring from less than 1 inch to over 5 inches, was not cigarette leaf tobacco, stemmed or non-stemmed, or scrap, but tobacco, manufactured or not manufactured. Basically, the history of the classification of tobacco as scrap discloses a product which fits the basic definition of waste or scrap, that is, that of a product unsuitable for its original purpose and fit only for remanufacture. In contrast, the machine-threshed tobacco in issue is a desired product, and is processed for the purpose of manufacturing cigarettes. Accordingly, the subject merchandise cannot be classified as scrap.

The next question is whether the instant product is classifiable as a leaf tobacco. The petition accurately describes the tobacco processed as a stemmed leaf product, but this does not establish it as a leaf for tariff purposes. A review of the various tariff laws reflects what Congress intended by the term "leaf". For instance, in the Tariff Act of March 3, 1883 (schedule F., Tobacco), leaf tobacco is described as a tobacco leaf which is 85 percent of the requisite size and necessary fineness of texture to be suitable for wrapper. In the Tariff Act of August 27, 1894 (schedule F., Tobacco and Manufactures of.), tobacco manufacturers were described as processing or manufacturing tobacco by such diverse means as cutting, pressing, grinding, crushing, or rubbing the tobacco leaf. In the Tariff Act of August 5, 1909, (schedule F., Tobacco and Manufactures of.), the unstemmed tobacco leaf is described as the natural leaf, not manufactured or altered in any way. The Summary of Tariff Information (1920), states that the term scrap tobacco usually refers to clippings accumulating in working cigars, although cheap leaf may be included.

In the Dictionary of Tariff Information (1924), tobacco was defined by the U.S. Tariff Commission as dried cured leaves of *Nicotiana Tobacco* (with or without midrib or stem) commonly known as leaf tobacco.

In the Summaries of Trade and Tariff Information (1967), cigarette leaf tobacco (not stemmed in item 170.32) or (stemmed 170.35) is described as filler tobacco "that is tobacco essentially in leaf form other than wrapper tobacco."

It is pertinent to note that the headnote definitions of wrapper and leaf tobacco have not been changed since the enactment of the current tariff schedule. Headnotes to part 13, schedule 1, TSUS, still refer to wrapper tobacco as that quality of leaf tobacco which has the requisite color, texture and burn, and is of sufficient size for cigar wrappers, and the term filler tobacco means all other leaf tobacco. Headnote 2 de-

fines the method of determining the percentage of wrapper tobacco by using the number of leaves of tobacco.

The only conclusion possible is that Congress, even in regard to the tariff which went into effect January 1980, has never intended to materially alter the definition of leaf tobacco. It might be noted that at the April 23-27, 1979, hearings before the House of Representatives Ways and Means Subcommittee on Trade relating to the Multilateral Trade Negotiations (1979) (serial 96-13, pp. 724-6), a spokesman for the Leaf Tobacco Exporters Association and the Tobacco Association of the United States, stated that members of the two associations purchased 70 percent of the U.S. tobacco, and indicated satisfaction with the current tariff structure. He noted that the U.S. exports about \$2 billion annually of tobacco and tobacco products and imports about \$500 million.

With respect to the petitioner's claim that the current classification at a lower rate of duty has resulted in a loss of revenue, it is worth noting that reclassification might merely cause importers to import whole tobacco in whole leaf form rather than tobacco which has already been machine-threshed, resulting in even less duty than that actually assessed.

Therefore, in view of the legislative and administrative history concerning classification of tobacco processed in the manner described, it is concluded that the subject tobacco product is correctly classifiable as tobacco, manufactured or not manufactured, not specially provided for, in item 170.80, TSUS.

This decision will be effective with respect to merchandise entered or withdrawn from warehouse for consumption on or after 30 days from the date of publication of this notice in the CUSTOMS BULLETIN.

Dated: May 15, 1980.

R. E. CHASEN,
Commissioner of Customs.

Published in the Federal Register, May 20, 1980 (44 FR 33761)

Decisions of the United States Customs Court

United States Customs Court

One Federal Plaza

New York, N. Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
Scovel Richardson
Frederick Landis

James L. Watson
Herbert N. Maletz
Bernard Newman
Nils A. Boe

Senior Judge

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Customs Decision

(C.D. 4854)

In Re	}	Court No. 80-4-00580
U.S. INTERNATIONAL TRADE COMMISSION		
INVESTIGATION NO. AA1921-147A (ELEC- TRIC GOLF CARS FROM POLAND)		

OPINION AND ORDER

(Dated April 30, 1980)

WATSON, Judge: Plaintiff, Melex U.S.A., Inc., is an importer of golf cars from Poland, which cars were the subject to an antidumping

finding in 1975 (T.D. 75-288). Plaintiff is presently a participant in an administrative proceeding instituted in February 1980 at its request, in which the defendant International Trade Commission (ITC), under section 751 of the Tariff Act of 1930, is investigating whether changed circumstances justify a revocation of the previous finding of dumping and remove the threat of material injury to a domestic industry.

In the course of the aforementioned proceeding, plaintiff requested confidential information submitted by domestic interests in accordance with section 777(c)(1) of the Tariff Act of 1930. The ITC denied the request. Plaintiff subsequently brought this action under section 777(c)(2) of the Tariff Act of 1930, seeking court-ordered disclosure of confidential information submitted concerning the price of domestic golf cars.

Defendant has moved to dismiss for failure to state a claim as well as for summary judgment. Plaintiff has made a cross-motion for summary judgment. Oral argument has been held in which the Harley-Davidson Motor Co., Inc., the party submitting the information to which plaintiff's request related, participated.

Defendant raises two basic jurisdictional challenges to the action. The first, which is of lesser consequence, argues that to allow this action would somehow give retroactive application to section 777(c)(2), prior to the January 1, 1980, effective date of the Trade Agreements Act of 1979 (Public Law 96-39). However, it seems clear to the court that the origin and effect of this action is entirely related to events occurring after January 1, 1980. Only after that date was the investigation initiated, the confidential information submitted, and the request for it by plaintiff denied. The entire dispute is directed toward a future decision by the ITC, which will be potentially subject to judicial review under section 516A(2)(B)(iii) of the Tariff Act of 1930, itself a creation of the Trade Agreements Act of 1979. In short, all the operative facts of this dispute arose subsequent to the effective date of the Trade Agreements Act of 1979, and the mere fact that this is an inquiry into the possible revocation of a 1975 dumping finding is of no jurisdictional significance.

Defendant's second jurisdictional challenge is a much more serious one and is based on the text of section 777(c)(2).

"(2) DISCLOSURE UNDER COURT ORDER.—If the administering authority denies a request for information under paragraph (1), or the Commission denies a request for confidential information submitted by the petitioner or an interested party in support of the petitioner concerning the domestic price or cost of production of the like product, then application may be made to the U.S. Customs Court for an order directing the administering authority or the Commission to make the information available. After notification

of all parties to the investigation and after an opportunity for a hearing on the record, the court may issue an order, under such conditions as the court deems appropriate, which shall not have the effect of stopping or suspending the investigation, directing the administering authority or the Commission to make all or a portion of the requested information described in the preceding sentence available under a protective order and setting forth sanctions for violation of such order if the court finds that, under the standards applicable in proceedings of the court, such an order is warranted, and that—

“(A) the administering authority or the Commission has denied access to the information under subsection (b)(1),

“(B) the person on whose behalf the information is requested is an interested party who is a party to the investigation in connection with which the information was obtained or developed, and

“(C) the party which submitted the information to which the request relates has been notified, in advance of the hearing, of the request made under this section and of its right to appear and be heard.” [*Italic supplied.*]

Defendant argues that section 777(c)(2), by its explicit language, does not apply to the circumstances in which plaintiff finds itself and does not provide plaintiff with an action for court-ordered disclosure. Defendant stresses that the circumstances described by section 777(c)(2) are the denial of a request for confidential information “* * * submitted by the petitioner or an interested party in support of the petitioner * * *.” Defendant notes that the investigation into changed circumstances under section 751 has no petitioner. In this respect it stands in marked contrast to the antidumping proceeding described in section 732, which is commenced by the filing of a petition on behalf of an industry, and which therefore fits together easily with section 777(c)(2).

Plaintiff argues that the legislative intention was to provide court-ordered disclosure in all instances and cites with understandable emphasis the report of the Senate Committee on Finance on H.R. 4537 which states as follows at page 100:

Reasons for the provision.—Section 777 provides the maximum availability of information to interested parties consistent with the need to provide adequate protection for information accorded confidential treatment. Petitioners under the antidumping and countervailing duty laws have long contended that their ability to obtain relief has been impaired by its lack of access to the information presented by the exporters and foreign manufacturers. By the same token, importers, exporters, and other respondents in such cases have complained of lack of access to information supplied by the domestic parties to such cases, particularly with respect to the economic health of the domestic industry involved. Access to information at the administrative level is even more imperative under the bill, which provides that the standard of

judicial review of most administrative actions in countervailing duty and antidumping duty proceedings is one of review on the administrative record.

Nevertheless, although the court can recognize a question of whether the statutory text completely expresses the legislative intent, it would go beyond judicial interpretation to change the explicit language of the statute. The term "petitioner" simply has too precise a legal meaning to surmise that it was used by the legislature in a loose manner. See, *Case v. Los Angeles Lumber Co.*, 308 U.S. 106, 115 (1939).

It therefore appears that with respect to a proceeding under section 751, the ITC has the discretion under section 777(c)(1) to decide whether or not it will disclose confidential information and that following the exercise of that discretion the information is not subject to court-ordered disclosure under section 777(c)(2).

For the reasons expressed above, it is hereby

ORDERED, that defendant's motion to dismiss be, and the same hereby is, GRANTED.

Decisions of the United States Customs Court

Abstracts Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, May 5, 1980.

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

ROBERT E. CHASEN,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
P80/63	Re, C.J. April 30, 1980	Kombi Ltd.	70-1-00074	Item 705.35 18%	Item 784.97 Free of duty under GSP, by virtue of Ex. Order No. 11858 of 11/24/75	Stonewall Trading Co. v. U.S. (C.D. 4023)	New York Ski gloves, skimitis, or ski mittens; product of eli- gible beneficiary country

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED		HELD		BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate	Par. or Item No. and Rate	Par. or Item No. and Rate		
P80/64	Re, C.J. April 30, 1980	Kombi International	79-8-01210	Item 705.35 16%	Item 734.97 Free of duty under GSF, by virtue of Ex. Order No. 11888 of 11/24/75			Stonewall Trading Co. v. U.S. (C.D. 4022)	New York Ski gloves, skimits, or ski mittens; product of eli- gible beneficiary country
R80/65	Watson, J. April 30, 1980	Entex Industries, Inc.	78-8-01489, etc.	Item 735.20 10%	Item 734.20 5.5%			APF Electronics Inc. v. U.S. (C.D. 4784)	Los Angeles T.V. game player machines
P80/66	Maletz, J. April 30, 1980	R. W. Smith & Co., Inc., a/c Poco Graphite, Inc. Poco Graphite, Inc.	76-7-01756, etc.	Item 517.91 7.5%	Item 517.11 2.5%			R. W. Smith & Co., Inc., a/c Poco Graphite, Inc. v. U.S. (Prot. abs. P79/97)	Houston Artificial graphite (grades A-200, A-250, FE-250 and A-490)

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R80/127	Re, C. J. April 29, 1980	CBS Imports, Inc.	73-4-01061, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency re- valuation	C.B.S. Imports Corp. v. U.S. (C.D. 4738)	New York Wearing apparel
R80/128	Re, C. J. April 29, 1980	CBS Imports Corp.	73-7-02107, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency re- valuation	C.B.S. Imports Corp. v. U.S. (C.D. 4738)	New York Wearing apparel
R80/129	Re, C. J. April 29, 1980	CBS Imports Corp.	77-3-00517, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency re- valuation	C.B.S. Imports Corp. v. U.S. (C.D. 4738)	New York Wearing apparel
R80/130	Re, C. J. April 29, 1980	Korvettes, Division of Arlen Realty & Development Corp.	73-7-01885	Export value	Appraised values shown on entry papers less additions included to reflect currency re- valuation	C.B.S. Imports Corp. v. U.S. (C.D. 4738)	New York Wearing apparel

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R80/131	Re, C. J. April 29, 1980	Korvettes, Division of Arien Realty & Development Corp.	73-12-03480, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4738)	New York Various articles
R80/132	Re, C.J. April 29, 1980	Korvettes, Division of Arien Realty & Development Corp.	76-5-01087, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4738)	New York Various articles
R80/133	Re, C.J. April 29, 1980	Herman Pecker & Co., Inc.	73-1-00292	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4738)	New York Stuffed animals
R80/134	Re, C.J. April 29, 1980	Topp Electronics, Inc.	74-7-01947, etc.	Export value	Values specified on entry papers by liquidating officer excluding all additions for currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4738)	New York Various articles
R80/135	Watson, J. April 29, 1980	Hayim & Co.	R80/14005, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Rugs
R80/136	Watson, J. April 30, 1980	Charmilles Corp. of America	77-5-00823	United States value	Determined by adding to f.o.b. unit invoice price in Swiss francs converted to a dollar	Agreed statement of facts	Chicago Machine tools and accessories and parts

R80/127	Watson, J. April 30, 1980	Charmilles Corp. of America	78-9-01432, etc.	United States value	value at fixed rate of exchange as shown on special customs in- voice in entry docu- ments (the "claimed value"), 53% of differ- ence between claimed value and appraised value	Agreed statement of facts	New York Machine tools and ac- cessories and parts
R80/128	Watson, J. April 30, 1980	Charmilles Corp. of America	70-3-00443	United States value	Determined by adding to f.o.b. unit invoice price in Swiss francs converted to a dollar value at fixed rate of exchange as shown on special customs in- voice in entry docu- ments (the "claimed value"), 53% of differ- ence between claimed value and appraised value	Agreed statement of facts	Philadelphia Machine tools and ac- cessories and parts

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R80/139	Watson, J. April 30, 1980	Hayim & Co.	23136A, etc.	Export value	Various appraised unit values less 7.5%, net packed	Agreed statement of facts	New York Rugs
R80-140	Watson, J. April 30, 1980	Hayim & Co.	233076A, etc.	Export value	Various appraised unit values less 7.5%, net packed	Agreed statement of facts	New York Rugs
R80/141	Watson, J. April 30, 1980	Hayim & Co.	255639A, etc.	Export value	Various appraised unit values less 7.5%, net packed	Agreed statement of facts	New York Rugs
R80/142	Watson, J. April 30, 1980	Lipmans Imports Inc.	269002A, etc.	Export value	F.o.b. unit invoice prices plus 26% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Brassieres
R80/143	Watson, J. April 30, 1980	Precision Knitting Accessories, Inc.	78-4-00592	Export value	Invoice unit values	Agreed statement of facts	New York Latch needles

Decision on Motion for Rehearing

APRIL 29, 1980

RSMC Inc. v. United States, Court No. 77-4-00572.—HOUSEHOLD ARTICLES—CHAMPAGNE GOBLETS.—C.D. 4847. Motion by plaintiff denied.

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs Officers and others concerned.

R. E. CHASEN,
Commissioner of Customs.

In the Matter of
CERTAIN INCLINED FIELD ACCEL-
ERATION TUBES AND COMPO-
NENTS THEREOF

Investigation No. 337-TA-67

Notice of Commission Determination Denying the Presiding Officer's
Recommended Summary Determination of Noninfringement and
Designating This Investigation as More Complicated

Procedural history

On December 11, 1979, respondent Dowlish Developments, Ltd., filed a motion for summary determination of noninfringement of U.S. Letters Patent No. 3,308,323 in connection with the Commission's investigation under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) of alleged unfair methods of competition and unfair acts in the importation and sale of certain inclined field acceleration tubes and components thereof in the United States. The motion for summary determination was opposed by both complainant, High Voltage Engineering Corp., and the Commission investigative attorney. Oral argument on the motion was heard by the presiding officer on December 28, 1979, and supplemental briefs were submitted. In his supplemental brief, the Commission investigative attorney recommended that the motion for summary determination be granted.

On January 10, 1980, the ALJ certified the motion to the Commission with the recommendation that it be granted. On January 24, 1980, complainant filed exceptions to the recommended determination and moved for an oral hearing before the Commission on the ALJ's recommended determination. The Commission granted complainant's motion and published notice of the hearing in the Federal Register on March 5, 1980.

Oral argument was held on March 12, 1980, in the Commission hearing room. Counsel for complainant and respondent Dowlish and the Commission investigative attorney participated. Posthearing briefs were submitted by complainant and Dowlish.

In its posthearing brief of March 24, 1980, complainant moved that the Commission designate this investigation "more complicated" within the meaning of 19 U.S.C. 1337(b)(1) and 19 CFR 210.15.

Recommendation of the Presiding Officer

In her recommended determination of January 10, 1980, the presiding officer recommended that the Commission (1) find that there is no genuine issue of material fact that must be decided in this case, (2) find that, based on the pleadings, affidavits, depositions, and admissions on file, respondent Dowlish is entitled to summary determination as a matter of law, and (3) terminate the investigation as to all respondents.

The presiding officer certified the evidentiary record to the Commission for its consideration. Copies of the presiding officer's recommendation and all other public documents may be obtained by contacting the Office of the Secretary to the Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Commission determination

Having reviewed and considered (1) the presiding officer's recommended determination of noninfringement together with the record as certified to the Commission pursuant to 19 CFR 210.50 and 210.53; and (2) oral argument and written submissions subsequent to the recommended determination, the Commission determines that the motion for summary determination of the noninfringement of U.S. Letters Patent No. 3,308,323 should be denied and that the investigation should be designated "more complicated." The extended investigation will be completed no later than December 27, 1980.

Accordingly, it is ORDERED THAT—

- (1) Respondent's motion for summary determination be denied;
- (2) The matter of infringement be remanded to the presiding officer to develop a record on all issues and continue adjudication of the case; and

(3) Investigation No. 337-TA-67 is designated "more complicated" within the meaning of 19 U.S.C. 1337(b)(1) and 19 CFR 210.15, allowing 6 additional months for completion of the investigation.

By order of the Commission.

Issued: May 6, 1980.

KENNETH R. MASON,
Secretary.

Investigation No. 701-TA-63 (Final)

TEXTILES AND TEXTILE PRODUCTS OF COTTON FROM PAKISTAN

*Notice of Institution of Final Countervailing Duty Investigation and
Scheduling of Hearing*

AGENCY: U.S. International Trade Commission.

ACTION: Institution of a final countervailing duty investigation.

SUMMARY: As a result of a request by the Government of Pakistan for review of an outstanding countervailing duty order issued by the U.S. Department of Commerce, that subsidies are being paid on certain textiles and textile products from Pakistan described hereinafter, the Commission hereby gives notice of the institution of investigation No. 701-TA-63 (final) to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of the merchandise covered by the countervailing duty order announced on July 13, 1979, (44 F.R. 40884), if that order were revoked. The textiles and textile products which are the subject of this investigation are the same as those covered by the Federal Register notice of April 16, 1980 (45 F.R. 25977) instituting investigation No. 701-TA-62 (final), except for cotton towels provided for in items 366.18, 366.21, 366.24, and 366.27 of the Tariff Schedules of the United States which are not covered by the Commerce Department's outstanding countervailing duty order and therefore are not included in this investigation.

EFFECTIVE DATE: May 2, 1980.

FOR ADDITIONAL INFORMATION, CONTACT: Ms. Vera Libeau, Senior Investigator, Office of Operations, U.S. International Trade Commission, room 339, 701 E Street NW., Washington, D.C. 20436; telephone 202-523-0368.

SUPPLEMENTARY INFORMATION: The provisions of the

Trade Agreements Act of 1979 (Public Law 96-39, 93 Stat. 144) amending the Tariff Act of 1930 (19 U.S.C. 1303) (hereinafter "the Act") became effective on January 1, 1980. The provisions of sections 104(b) (1) and (2) provide that in the case of a countervailing duty order issued under section 303 of the act—

(A) Which is not a countervailing duty order to which subsection (a) applies,

(B) Which applies to merchandise which is the product of a country under the agreement, and

(C) Which is in effect on January 1, 1980, or which is issued pursuant to court order in an action brought under section 516(d) of that act before that date,

upon the request of the government of such a country or of exporters accounting for a significant proportion of exports to the United States of merchandise which is covered by the order, submitted within 3 years after the effective date of title VII of the act, the Commission shall commence an investigation to determine whether—

(A) An industry in the United States—

(i) Would be materially injured, or

(ii) Would be threatened with material injury, or

(B) The establishment of an industry in the United States would be materially retarded,

by reason of imports of the merchandise covered by the countervailing duty order if the order were to be revoked.

Section 104(b)(3) required that the determination shall be made not later than 3 years after the commencement date of the investigation. However, pursuant to section 207.32 of the Commission's Rules of Practice and Procedure (19 CFR 207.32) this investigation shall be conducted in accordance with the procedures and time limitations prescribed by part 207, subpart C (19 CFR 207) applying to final investigations as to whether injury to domestic industries results from subsidized exports to the United States. Inasmuch as the products covered by this investigation are the same as those covered in investigation No. 701-TA-62 (final), textiles and textile products of cotton from Pakistan, except as specified above, the two investigations will be conducted concurrently.

WRITTEN SUBMISSIONS: Any person may submit a written statement of information pertinent to the subject matter of this investigation. A signed original and 19 true copies of each submission must be filed at the Office of the Secretary, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436, on or before June 30, 1980.

All written submissions, except for confidential business data, will be available for inspection by interested persons at the Office of the

Secretary and in the Commission's New York Office, 6 World Trade Center, New York, N.Y. 10048. Any submission of business information for which confidential treatment is desired shall be submitted separately from other documents. The envelope and all pages of such submissions must be clearly labeled "Confidential business information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6).

A staff report containing preliminary findings of fact will be available to all interested parties on June 3, 1980.

HEARING: The Commission will hold a hearing in connection with this investigation on June 25, 1980. It will be held in the hearing room of the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436, and will begin at 10 a.m., e.d.t. Parties wishing to participate should notify the Office of the Secretary not later than 5 days prior to the date of the hearing. In addition, all parties desiring to appear at the hearing and make oral presentations must submit prehearing statements. Such statements must be filed on or before June 17, 1980. For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subpart C (19 CFR 207), and part 201, subparts A through E (19 CFR 201).

This notice is published pursuant to section 207.20 of the Commission's Rules of Practice and Procedure (19 CFR 207.20, 44 F.R. 76458).

By order of the Commission.

Issued: May 5, 1980.

KENNETH R. MASON,
Secretary.

Notice of Investigation (332-108)

Study of the Multifiber Arrangement

AGENCY: U.S. International Trade Commission.

ACTION: In accordance with the provisions of section 332 of the Tariff Act of 1930 (19 U.S.C. 1332), the Commission has instituted investigation No. 332-108 for the purpose of gathering and presenting information on trade in textile products covered under the Arrangement Regarding International Trade in Textiles, December 20, 1973,

25 UST 1001, TIAS No. 7840, extended December 15, 1977, TIAS No. 8839, known as the Multifiber Arrangement (MFA). Data will be provided to show U.S. imports by country, by MFA category, and by fiber and product, and the import restraint levels in the bilateral agreements which the United States has entered into under the MFA will be compared with actual imports. In addition, the report will describe the administration and monitoring of quotas, examine changes in quota levels that occurred during the lifetime of the bilateral agreements, and discuss the tightening of those agreements in accordance with the commitments in the administration's textile program. The report will build on an earlier study released by the Commission, *The History and Current Status of the Multifiber Arrangement*, USITC Publication 850 (1978).

This report will assist in an accurate review and analysis of experience with the current MFA and provide a basis for developing a position with regard to any subsequent negotiated extension and its likely impact on the textile program.

EFFECTIVE DATE: May 1, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Reuben Schwartz or Mr. John Taylor, Textiles, Leather Products, and Apparel Division, U.S. International Trade Commission, Washington, D.C. 20436; phone 202-523-0114 or 202-523-0365.

WRITTEN SUBMISSIONS: Since there will be no public hearing scheduled for this study, written submissions from interested parties are invited concerning any phase of the study. Commercial or financial information which a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission in this study, written statements should be submitted at the earliest practicable date, but no later than October 15, 1980. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

By order of the Commission.

Issued: May 7, 1980.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN AIRTIGHT CAST-IRON STOVES } Investigation No. 337-TA-69

Notice of Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference will be held in this case at 10 a.m., on June 2, 1980, in the Dodge Center, second floor, 1010 Wisconsin Avenue NW., Washington, D.C. The purpose of this prehearing conference is to review the prehearing statements submitted by the parties, to stipulate into the record as many exhibits as possible, and to discuss any questions raised by the parties relating to the hearing.

Notice is also given that the hearing in this proceeding will commence at 9 a.m., on June 3, 1980, in the Dodge Center, second floor, 1010 Wisconsin Avenue NW., Washington, D.C.

The Secretary shall publish this notice in the Federal Register.

Issued: May 7, 1980.

JANET D. SAXON,
Administrative Law Judge.

Index

U.S. Customs Service

Treasury decisions:

American Manufacturer's petition decision; scrap and cigarette leaf tobacco.....	T.D. No. 80-132
Cotton and manmade fiber textile products—restricted on entry—Dominican Republic.....	80-123
Manmade fiber textiles—restriction on entry—Malaysia.....	80-124
Cotton textile products—restriction on entry—Brazil.....	80-125
Foreign currencies:	
Daily certified rates; March 31–April 4, 1980.....	80-127
Daily certified rates; April 7–11, 1980.....	80-128
Daily certified rates; April 14–18, 1980.....	80-129
Rates which varied from quarterly rate; week of April 14–18, 1980..	80-130
Rates which varied from quarterly rate; week of April 10, 1980.....	80-131

Customs Court

Antidumping finding; golf cars from Poland, C.D. 4854

Confidential information:

Court-ordered disclosure, action seeking, C.D. 4854

Disclosure of; International Trade Commission, C.D. 4854

Construction:

Public Law 96-39, 93 Stat. 144, C.D. 4854

Tariff Act of 1930:

Sec. 516A(2)(B)(iii), C.D. 4854

Sec. 732, C.D. 4854

Sec. 751, C.D. 4854

Sec. 777(c)(1), C.D. 4854

Sec. 777(c)(2), C.D. 4854

Trade Agreements Act of 1979, 93 Stat. 144, C.D. 4854

Court-ordered disclosure, action seeking; confidential information, C.D. 4854

Cross-motion for summary judgment, C.D. 4854

Disclosure, court-ordered, C.D. 4854

Electric golf cars from Poland, ITC investigation; opinion and order of U.S.

Customs Court, C.D. 4854

Failure to state a claim; motion to dismiss granted, C.D. 4854

Golf cars from Poland; antidumping finding, C.D. 4854

International Trade Commission; confidential information, disclosure of, C.D. 4854

Legislative history; S. Rep. No. 96-249, 96th Cong., 1st Sess. 100 (1979), C.D. 4854

Motion for summary judgment, C.D. 4854

Motion to dismiss granted; failure to state a claim, C.D. 4854

Opinion and order of U.S. Customs Court; electric golf cars from Poland, ITC investigation, C.D. 4854

Poland, electric golf cars from, C.D. 4854

Rehearing, decision on motion for, denied (p. —); household articles; champagne goblets

Summary judgment:

 Cross-motion for, C.D. 4854

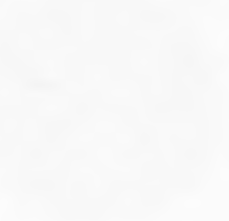
 Motion for, C.D. 4854

Words and phrases; petitioner, C.D. 4854



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DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
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